

AMENDMENT TO RULES COMMITTEE PRINT 118-

10

OFFERED BY MS. DELAURO OF CONNECTICUT

At the end of subtitle A of title XVIII, insert the following new section:

1 **SEC. _____ PROTECTION OF NATIONAL CRITICAL CAPA-**
2 **BILITIES.**

3 The Trade Act of 1974 (19 U.S.C. 2101 et seq.) is
4 amended by adding at the end the following:

5 **“TITLE X—PROTECTION OF NA-**
6 **TIONAL CRITICAL CAPABILI-**
7 **TIES**

8 **“SEC. 1001. DEFINITIONS.**

9 “In this title:

10 “(1) APPROPRIATE CONGRESSIONAL COMMIT-

11 TEES.—The term ‘appropriate congressional com-

12 mittees’ means—

13 “(A) the Committee on Finance, the Com-

14 mittee on Banking, Housing, and Urban Af-

15 fairs, the Select Committee on Intelligence, and

16 the Committee on Foreign Relations of the Sen-

17 ate; and

1 “(B) the Committee on Ways and Means,
2 the Committee on Financial Services, the Per-
3 manent Select Committee on Intelligence, and
4 the Committee on Foreign Affairs of the House
5 of Representatives.

6 “(2) COUNTRY OF CONCERN.—The term ‘coun-
7 try of concern’ means, subject to such regulations as
8 may be prescribed in accordance with section 1008,
9 any country the government of which is engaged in
10 a long-term pattern or serious instances of conduct
11 significantly adverse to the national security of the
12 United States or the security and safety of United
13 States persons, such as the People’s Republic of
14 China, the Russian Federation, Iran, North Korea,
15 Cuba, and the regime of Nicolás Maduro in Ven-
16 ezuela.

17 “(3) COVERED ACTIVITY.—

18 “(A) IN GENERAL.—Subject to such regu-
19 lations as may be prescribed in accordance with
20 section 1008, and except as provided in sub-
21 paragraph (B), the term ‘covered activity’
22 means any activity engaged in by a United
23 States person in a national critical capabilities
24 sector that involves—

1 “(i) an acquisition of an equity inter-
2 est or contingent equity interest, or mone-
3 tary capital contribution, in a covered for-
4 eign entity, directly or indirectly, by con-
5 tractual commitment or otherwise, with the
6 goal of generating income or gain;

7 “(ii) an arrangement for an interest
8 in the short- or long-term debt obligations
9 of a covered foreign entity that includes
10 government rights that are characteristic
11 of an equity investment, management, or
12 other important rights;

13 “(iii) the establishment of a wholly
14 owned subsidiary in a country of concern,
15 such as a greenfield investment, for the
16 purpose of production, design, testing,
17 manufacturing, fabrication, development,
18 or research related to one or more national
19 critical capabilities sectors;

20 “(iv) the establishment of a joint ven-
21 ture in a country of concern or with a cov-
22 ered foreign entity for the purpose of pro-
23 duction, design, testing, manufacturing,
24 fabrication, development, or research in-
25 volving one or more national critical capa-

1 bilities sectors, or other contractual or
2 other commitments involving a covered for-
3 eign entity to jointly research and develop
4 new innovation, including through the
5 transfer of capital or intellectual property
6 or other business proprietary information;

7 “(v) the acquisition by a United
8 States person with a covered foreign entity
9 of—

10 “(I) operational cooperation, such
11 as through supply or support arrange-
12 ments;

13 “(II) the right to board represen-
14 tation (as an observer, even if limited,
15 or as a member) or an executive role
16 (as may be defined through regula-
17 tion) in a covered foreign entity;

18 “(III) the ability to direct or in-
19 fluence such operational decisions as
20 may be defined through such regula-
21 tions;

22 “(IV) formal governance rep-
23 resentation in any operating affiliate,
24 like a portfolio company, of a covered
25 foreign entity; or

1 “(V) a new relationship to share
2 or provide business services, such as
3 but not limited to financial services,
4 marketing services, maintenance, or
5 assembly functions, related to a na-
6 tional critical capabilities sector;

7 “(vi) any activity by a recipient or
8 beneficiary of financial assistance, includ-
9 ing grants, tax incentives, or other types of
10 funding, with respect to a covered foreign
11 entity or a country of concern;

12 “(vii) any activity with respect to a
13 covered foreign entity or a country of con-
14 cern by an entity that benefits from annual
15 procurement of more than an amount to be
16 determined in regulations prescribed in ac-
17 cordance with section 1008 in goods or
18 services by a United States national secu-
19 rity agency; or

20 “(viii) except as provided in subpara-
21 graph (B), any other transaction involving
22 a country of concern or with a covered for-
23 eign entity defined in regulations pre-
24 scribed in accordance with section 1008.

1 “(B) EXCEPTIONS.—The term ‘covered ac-
2 tivity’ does not include—

3 “(i) any transaction the value of
4 which the Committee determines is de
5 minimis;

6 “(ii) any category of transactions that
7 the Committee determines is in the na-
8 tional interest of the United States, as
9 may be defined in regulations prescribed in
10 accordance with section 1008; or

11 “(iii) any ordinary business trans-
12 action as may be defined in such regula-
13 tions.

14 “(4) COVERED FOREIGN ENTITY.—

15 “(A) IN GENERAL.—Subject to regulations
16 prescribed in accordance with section 1008, and
17 except as provided in subparagraph (B), the
18 term ‘covered foreign entity’ means—

19 “(i) any entity that is incorporated in,
20 has a principal place of business in, or is
21 organized under the laws of a country of
22 concern;

23 “(ii) any entity the equity securities of
24 which are primarily traded on one or more
25 exchanges in a country of concern;

1 “(iii) any entity in which any covered
2 foreign entity holds, individually or in the
3 aggregate, directly or indirectly, an owner-
4 ship interest of greater than 50 percent; or

5 “(iv) any other entity that is not a
6 United States person and that meets such
7 criteria as may be specified by the Com-
8 mittee in such regulations.

9 “(B) EXCEPTION.—The term ‘covered for-
10 eign entity’ does not include any entity de-
11 scribed in subparagraph (A) that can dem-
12 onstrate that a majority of the equity interest
13 in the entity is ultimately owned by—

14 “(i) nationals of the United States; or

15 “(ii) nationals of such countries (other
16 than countries of concern) as are identified
17 for purposes of this subparagraph pursu-
18 ant to regulations prescribed in accordance
19 with section 1008.

20 “(5) NATIONAL CRITICAL CAPABILITIES SEC-
21 TOR.—Subject to regulations prescribed in accord-
22 ance with section 1008, the term ‘national critical
23 capabilities sector’ includes sectors within the fol-
24 lowing areas, as specified in such regulations:

1 “(A) Semiconductor manufacturing and
2 advanced packaging.

3 “(B) Large-capacity batteries.

4 “(C) Critical minerals and materials.

5 “(D) Artificial intelligence.

6 “(E) Quantum information science and
7 technology.

8 “(F) Active pharmaceutical ingredients.

9 “(G) Automobile manufacturing.

10 “(H) Any other sector as may be—

11 “(i) determined by the President to be
12 a national critical capabilities sector based
13 on the significance of the sector to the na-
14 tional security of the United States; and

15 “(ii) included in such definition by the
16 President through such regulations.

17 “(6) PARTY.—The term ‘party’, with respect to
18 an activity, has the meaning given that term in reg-
19 ulations prescribed in accordance with section 1008.

20 “(7) UNITED STATES.—The term ‘United
21 States’ means the several States, the District of Co-
22 lumbia, and any territory or possession of the
23 United States.

24 “(8) UNITED STATES PERSON.—The term
25 ‘United States person’ means—

1 “(A) an individual who is a citizen or na-
2 tional of the United States or an alien lawfully
3 admitted for permanent residence in the United
4 States; and

5 “(B) any corporation, partnership, or other
6 entity organized under the laws of the United
7 States or the laws of any jurisdiction within the
8 United States.

9 **“SEC. 1002. ADMINISTRATION OF UNITED STATES INVEST-**
10 **MENT NOTIFICATION, REVIEW, AND PROHIBI-**
11 **TION AUTHORITY.**

12 “(a) ESTABLISHMENT OF COMMITTEE ON NATIONAL
13 CRITICAL CAPABILITIES.—

14 “(1) IN GENERAL.—The President shall estab-
15 lish an interagency committee to administer this
16 title, to be known as the ‘Committee on National
17 Critical Capabilities’ (in this title referred to as the
18 ‘Committee’).

19 “(2) DELEGATION.—The President may dele-
20 gate the requirement under paragraph (1), and all
21 or any portion of the authorities and functions under
22 this title, to the head of an Executive department
23 (as defined in section 101 of title 5, United States
24 Code).

1 “(b) MEMBERSHIP.—The following agencies shall be
2 represented on the Committee:

3 “(1) The Office of the United States Trade
4 Representative.

5 “(2) The Department of Commerce.

6 “(3) The Department of State.

7 “(4) The Department of the Treasury.

8 “(5) The Department of Homeland Security.

9 “(6) The Department of Defense.

10 “(7) The Office of Science and Technology Pol-
11 icy.

12 “(8) The Department of Justice.

13 “(9) The Department of Energy.

14 “(10) The Department of Health and Human
15 Services.

16 “(11) The Department of Agriculture.

17 “(12) The Department of Labor.

18 “(13) The Office of the Director of National In-
19 telligence.

20 “(14) Any other Federal agency the President
21 determines appropriate, generally, or on a case-by-
22 case basis.

23 “(c) DESIGNATION AS VOTING MEMBERS.—The
24 heads of the agencies specified in subsection (b) shall be
25 voting members of the Committee.

1 “(d) CHAIRPERSON.—The head of the Executive de-
2 partment to which the President delegates authority under
3 subsection (a) shall serve as the chairperson of the Com-
4 mittee.

5 “(e) CONSULTATIONS.—In carrying out the duties of
6 the chairperson of the Committee, the chairperson shall
7 consult with the United States Trade Representative, the
8 Secretary of Defense, the Secretary of Commerce, the Sec-
9 retary of State, and the Secretary of the Treasury.

10 **“SEC. 1003. MANDATORY NOTIFICATION OF COVERED AC-**
11 **TIVITIES; REVIEW AND ACTIONS TO MITI-**
12 **GATE RISK.**

13 “(a) MANDATORY NOTIFICATION.—

14 “(1) IN GENERAL.—Subject to regulations pre-
15 scribed in accordance with section 1008, beginning
16 on the date that is 90 days after such regulations
17 take effect, a United States person that plans to en-
18 gage in a covered activity shall submit to the Com-
19 mittee a complete written notification of the activity
20 not later than 90 days before the anticipated initi-
21 ation date of the activity.

22 “(2) CIRCULATION OF NOTIFICATION.—

23 “(A) IN GENERAL.—The Committee shall,
24 upon receipt of a notification under paragraph
25 (1), promptly inspect the notification for com-

1 pleteness, and, if complete, immediately cir-
2 culate the notification to each agency specified
3 in section 1002(b).

4 “(B) INCOMPLETE NOTIFICATIONS.—If a
5 notification submitted under paragraph (1) is
6 incomplete, the Committee shall , unilaterally or
7 at request of any member of the Committee,
8 promptly inform the United States person that
9 submits the notification that the notification is
10 not complete and provide an explanation of rel-
11 evant material respects in which the notification
12 is not complete.

13 “(C) REFERRAL TO ATTORNEY GEN-
14 ERAL.—If the Committee has reason to believe
15 that a covered activity that is the subject of a
16 notification submitted under paragraph (1) may
17 be prohibited under this title or regulations pre-
18 scribed in accordance with section 1008, the
19 President may refer the notification to the At-
20 torney General for such action as the Attorney
21 General may determine to be proper.

22 “(b) REVIEW.—

23 “(1) IN GENERAL.—Subject to regulations pre-
24 scribed in accordance with section 1008, the Com-
25 mittee may, beginning on the date that is 180 days

1 after the date on which such regulations take effect,
2 review a covered activity that is the subject of a no-
3 tification under subsection (a) to determine if the
4 activity poses a risk to the national security of the
5 United States, including by considering factors spec-
6 ified in section 1004.

7 “(2) NOTICE OF REVIEW.—Not later than 45
8 days after receipt of a complete notification under
9 subsection (a), the Committee shall notify the
10 United States person that submitted the notification
11 of the decision of the Committee with respect to
12 whether to initiate a review under paragraph (1) of
13 the covered activity that is the subject of the notifi-
14 cation.

15 “(3) INITIATION OF UNILATERAL REVIEW.—
16 The Committee may initiate a unilateral review
17 under paragraph (1) of a covered activity for which
18 notification is not submitted under subsection (a).

19 “(c) MITIGATION.—

20 “(1) IN GENERAL.—If the Committee has rea-
21 son to believe that a covered activity that is the sub-
22 ject of a notification under subsection (a) or with re-
23 spect to which the Committee initiates a unilateral
24 review under subsection (b)(3) poses a risk to the
25 national security of the United States, the Com-

1 mittee may negotiate, enter into or impose, and en-
2 force any agreement or condition with any party to
3 the covered activity in order to mitigate any risk to
4 the national security of the United States that arises
5 as a result of the covered activity.

6 “(2) ABANDONMENT OF ACTIVITIES.—If a
7 party to a covered activity has voluntarily chosen to
8 abandon the activity, the Committee may negotiate,
9 enter into or impose, and enforce any agreement or
10 condition with any party to the covered activity for
11 purposes of effectuating such abandonment and
12 mitigating any risk to the national security of the
13 United States that arises as a result of the covered
14 activity.

15 “(3) AGREEMENTS AND CONDITIONS RELATING
16 TO COMPLETED ACTIVITIES.—While the Committee
17 is conducting a review of a covered activity under
18 subsection (b), the Committee may negotiate, enter
19 into or impose, and enforce any agreement or condi-
20 tion with any party to the covered activity in order
21 to mitigate any interim risk to the national security
22 of the United States that may arise as a result of
23 the covered activity until such time that the Com-
24 mittee has completed action with respect to the cov-
25 ered activity under this title.

1 “(4) TREATMENT OF OUTDATED AGREEMENTS
2 OR CONDITIONS.—The Committee shall periodically
3 review the appropriateness of an agreement or condi-
4 tion imposed under paragraph (1), (2), or (3) in
5 mitigating the risk identified under subsection (b)(1)
6 and terminate, phase out, or otherwise amend the
7 agreement or condition if a risk no longer requires
8 mitigation through the agreement or condition.

9 “(5) JURISDICTION.—The provisions of section
10 706(b) shall apply to any mitigation agreement en-
11 tered into or condition imposed under paragraph (1),
12 (2), or (3).

13 “(d) UNILATERAL ACTION BY THE COMMITTEE TO
14 MITIGATE RISK POSED BY A COVERED ACTIVITY.—

15 “(1) IN GENERAL.—Subject to paragraphs (2)
16 and (4), the Committee may take such action for
17 such time as the Committee considers appropriate to
18 address any risk to the national security of the
19 United States posed by a covered activity that is the
20 subject of a notification under subsection (a) or with
21 respect to which the Committee initiates a unilateral
22 review under subsection (b)(3), including—

23 “(A) approving the covered activity subject
24 to a mitigation agreement entered into or condi-
25 tions imposed under subsection (c); or

1 “(B) if the Committee attempts to mitigate
2 the risk under subsection (c) and determines
3 that mitigation is inadequate to protect the na-
4 tional security of the United States, prohibiting
5 the covered activity.

6 “(2) SEEKING ALTERNATIVE ENFORCEMENT.—
7 The Committee shall consider other existing meas-
8 ures to address any risk described in paragraph (1)
9 before taking any action under this subsection with
10 respect to the covered activity.

11 “(3) ANNOUNCEMENT BY COMMITTEE.—Not
12 later than 90 days after the date on which the Com-
13 mittee initiates a review under subsection (b), the
14 Committee shall announce the decision of the Com-
15 mittee with respect to whether the Committee plans
16 to take action pursuant to paragraph (1).

17 “(4) FINDINGS BY COMMITTEE.—The Com-
18 mittee may exercise the authority under paragraph
19 (1) with respect to a covered activity only if the
20 Committee finds that—

21 “(A) there is credible evidence that leads
22 the Committee to believe that the covered activ-
23 ity poses a risk to the national security of the
24 United States; and

1 “(B) provisions of law (other than this
2 subsection and the International Emergency
3 Economic Powers Act (50 U.S.C. 1701 et seq.))
4 do not, in the judgment of the Committee pro-
5 vide adequate and appropriate authority for the
6 Committee to protect the national security with
7 respect to the covered activity.

8 “(5) FACTORS TO BE CONSIDERED.—For pur-
9 poses of determining whether to take action under
10 paragraph (1), the Committee shall consider, among
11 other factors, each of the factors described in section
12 1004, as appropriate.

13 “(6) PUBLIC DISCLOSURE.—The Committee
14 shall publish in the Federal Register a notice of each
15 exercise of the authority under paragraph (1).

16 “(e) AUTHORITY TO PROHIBIT AND REGULATE COV-
17 ERED ACTIVITIES.—

18 “(1) AUTHORITY.—

19 “(A) IN GENERAL.—Subject to regulations
20 prescribed in accordance with section 1008, and
21 except as provided by paragraph (2), the Com-
22 mittee may, on or after the date of the enact-
23 ment of this title, prohibit or regulate any cov-
24 ered activity or category of covered activities by

1 any person, or with respect to any property,
2 subject to the jurisdiction of the United States.

3 “(B) CRITERIA.—In exercising the author-
4 ity under subparagraph (A) with respect to a
5 covered activity or category of covered activities,
6 the President may use—

7 “(i) criteria based on—

8 “(I) the nature of the covered ac-
9 tivity or category of covered activities;

10 “(II) the nature of the covered
11 foreign entity involved in the covered
12 activity or category of covered activi-
13 ties, including the country of concern
14 associated with the covered foreign
15 entity; or

16 “(III) the nature of the national
17 critical capabilities sector involved in
18 the covered activity or category of cov-
19 ered activities; or

20 “(ii) such other criteria as the Com-
21 mittee determines may result in a covered
22 activity or category of covered activities
23 posing a risk to the national security of the
24 United States.

1 “(2) EXCEPTIONS.—The Committee, pursuant
2 to regulations prescribed in accordance with section
3 1008—

4 “(A) may not prohibit under paragraph (1)
5 a covered activity or category of covered activi-
6 ties for the conduct of the official business of
7 the Federal Government, the United Nations,
8 or international financial institutions or multi-
9 lateral development banks (including their spe-
10 cialized agencies, programs, funds, and related
11 organizations), or by employees, grantees, or
12 contractors thereof; and

13 “(B) may authorize orders, directives, or
14 licenses to permit a covered activity otherwise
15 prohibited under paragraph (1), as the Com-
16 mittee determines appropriate.

17 “(f) CONFIDENTIALITY OF INFORMATION.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), any information or documentary material
20 and any information or materials derived from such
21 information or documentary materials filed with the
22 Committee pursuant to this section shall be exempt
23 from disclosure under section 552 of title 5, United
24 States Code, and no such information or documen-
25 tary material may be made public.

1 “(2) EXCEPTIONS.—The exemption from disclo-
2 sure provided by paragraph (1) shall not prevent the
3 disclosure of the following:

4 “(A) Information relevant to any adminis-
5 trative or judicial action or proceeding.

6 “(B) Information to Congress or any duly
7 authorized committee or subcommittee of Con-
8 gress.

9 “(C) Information important to the national
10 security analysis or actions of the President to
11 any domestic governmental entity, or to any
12 foreign governmental entity of an ally or part-
13 ner of the United States, under the exclusive di-
14 rection and authorization of the President, only
15 to the extent necessary for national security
16 purposes, and subject to appropriate confiden-
17 tiality and classification requirements.

18 “(D) Information that the parties have
19 consented to be disclosed to third parties.

20 “(g) RECORDKEEPING.—In taking action under this
21 section with respect to a covered activity, the Committee
22 may require any person—

23 “(1) to keep a full record of, and to furnish
24 under oath, in the form of reports or otherwise, com-
25 plete information relative to the covered activity be-

1 fore, during, or after the completion of the covered
2 activity, or as may be otherwise necessary to enforce
3 the provisions of this title; and

4 “(2) to produce any books of account, records,
5 contracts, letters, memoranda, or other papers rel-
6 ative to the covered activity in the custody or control
7 of the person.

8 **“SEC. 1004. FACTORS TO BE CONSIDERED.**

9 “The Committee, in reviewing and making a deter-
10 mination with respect to a covered activity under section
11 1003, shall consider any factors relating to the national
12 security of the United States that the Committee considers
13 relevant, which may include—

14 “(1) the economic, intelligence, military, health,
15 or agricultural interests of the United States;

16 “(2) the history of distortive or predatory
17 trade-related practices in each country in which a
18 covered activity occurs;

19 “(3) control and beneficial ownership (as deter-
20 mined in accordance with section 847 of the Na-
21 tional Defense Authorization Act for Fiscal Year
22 2020 (Public Law 116–92; 10 U.S.C. 4819 note)) of
23 each covered foreign entity that is a party to the
24 covered activity;

1 “(4) the impact on the domestic industry and
2 resulting resiliency, including the domestic human
3 capital and supply chains, taking into consideration
4 any pattern of foreign investment in the domestic in-
5 dustry;

6 “(5) whether the covered activity could, directly
7 or indirectly, support, enhance, or enable the capa-
8 bilities of a country of concern or a covered foreign
9 entity; and

10 “(6) any additional national security factors
11 identified in regulations prescribed in accordance
12 with section 1008.

13 **“SEC. 1005. SUPPLY CHAIN SENSITIVITIES.**

14 “The Committee shall determine the sensitivities and
15 risks for sourcing of goods, materials, and technologies
16 needed for national critical capabilities sectors in the
17 United States, in accordance with the following:

18 “(1) The sourcing of least concern shall be for
19 goods, materials, and technologies sourced, and sup-
20 ply chains housed, in whole within countries that are
21 allies of the United States.

22 “(2) The sourcing of greater concern shall be
23 for goods, materials, and technologies sourced, and
24 supply chains housed in part within countries of con-
25 cern or from a covered foreign entity but for which

1 substitute production is available from elsewhere at
2 required scale to meet the needs of the United
3 States, including in terms of surge capacity.

4 “(3) The sourcing of greatest concern shall be
5 for goods, materials, and technologies sourced, and
6 supply chains housed, wholly or in part, in countries
7 of concern or from a covered foreign entity and for
8 which substitute production is unavailable elsewhere
9 at required scale.

10 **“SEC. 1006. REPORTING REQUIREMENTS.**

11 “(a) IN GENERAL.—Not later than 360 days after
12 the date on which the regulations prescribed under section
13 1008 take effect, and not less frequently than every 90
14 days thereafter, the Committee shall submit to the appro-
15 priate congressional committees a report—

16 “(1) on the determination under section 1005
17 with respect to sensitivities and risks for sourcing of
18 goods, materials, and technologies described in that
19 section;

20 “(2) providing, for the year preceding submis-
21 sion of the report—

22 “(A) a summary of the notifications re-
23 ceived under subsection (a) of section 1003 and
24 reviews conducted pursuant to such notifica-
25 tions;

1 “(B) a summary of reviews initiated under
2 paragraph (1) or (3) of subsection (b) of that
3 section;

4 “(C) a description of reviews during which
5 the Committee determined no action was re-
6 quired; and

7 “(D) a summary of—

8 “(i) mitigation agreements entered
9 into and conditions imposed under sub-
10 section (c) of that section; and

11 “(ii) other existing, relevant mitiga-
12 tion measures that could be used to miti-
13 gate the risk; and

14 “(3) assessing the overall impact of such re-
15 views on national critical capabilities sectors, which
16 may include recommendations on—

17 “(A) expansion of Federal programs to
18 support or protect the production or supply of
19 national critical capabilities sectors in the
20 United States, including the potential of exist-
21 ing legal authorities to address any related na-
22 tional security concerns;

23 “(B) investments to enhance national crit-
24 ical capabilities sectors and reduce dependency
25 on countries of concern; and

1 “(C) the continuation, expansion, or modi-
2 fication of the Committee.

3 “(b) REPORT ON SECTORS.—Not less frequently than
4 annually, the Committee shall submit to the appropriate
5 congressional committees a report describing—

6 “(1) the sectors determined by the President to
7 be national critical capabilities sectors under section
8 1001(5)(H); and

9 “(2) the reasons why each such sector was de-
10 termined to be a national critical capabilities sector.

11 “(c) FORM OF REPORT.—Each report required by
12 this section shall be submitted in unclassified form, but
13 may include a classified annex.

14 **“SEC. 1007. PENALTIES AND ENFORCEMENT.**

15 “(a) PENALTIES.—

16 “(1) UNLAWFUL ACTS.—Subject to regulations
17 prescribed in accordance with section 1008, it shall
18 be unlawful—

19 “(A) to engage in a covered activity pro-
20 hibited under this title or pursuant to such reg-
21 ulations;

22 “(B) to fail to submit a notification under
23 subsection (a) of section 1003 with respect to
24 a covered activity or to submit other informa-
25 tion as required by the Committee;

1 “(C) to make a material misstatement or
2 to omit a material fact in any information sub-
3 mitted to the Committee under this title;

4 “(D) to breach or violate a mitigation
5 agreement entered into or condition imposed
6 under subsection (c) of that section; or

7 “(E) to engage in any activity that evades
8 or avoids, has the purpose of evading or avoid-
9 ing, causes a violation of, or attempts to violate
10 a prohibition under this title or pursuant to
11 such regulations.

12 “(2) CIVIL PENALTIES.—A civil penalty may be
13 imposed on any person who commits an unlawful act
14 described in paragraph (1) in an amount not to ex-
15 ceed the greater of—

16 “(A) \$250,000; or

17 “(B) an amount that is twice the amount
18 of the covered activity that is the basis of the
19 violation with respect to which the penalty is
20 imposed.

21 “(b) ENFORCEMENT.—The President may direct the
22 Attorney General to seek appropriate relief, including di-
23 vestment relief, in the district courts of the United States,
24 in order to implement and enforce this title.

1 **“SEC. 1008. REQUIREMENT FOR REGULATIONS.**

2 “(a) IN GENERAL.—Not later than 360 days after
3 the date of the enactment of this title, the Committee shall
4 finalize regulations to carry out this title.

5 “(b) ELEMENTS.—Regulations prescribed to carry
6 out this title shall include specific examples of the types
7 of—

8 “(1) activities that will be considered to be cov-
9 ered activities; and

10 “(2) the specific sectors and subsectors that
11 may be considered to be national critical capabilities
12 sectors, at the discretion of the Committee.

13 “(c) REQUIREMENTS FOR CERTAIN REGULATIONS.—

14 “(1) IN GENERAL.—The Committee shall pre-
15 scribe regulations further defining the terms used in
16 this title, including ‘covered activity’, ‘covered for-
17 eign entity’, and ‘party’, in accordance with sub-
18 chapter II of chapter 5 and chapter 7 of title 5,
19 United States Code (commonly known as the ‘Ad-
20 ministrative Procedure Act’).

21 “(2) MODIFICATIONS TO COUNTRIES OF CON-
22 CERN.—The Committee shall prescribe regulations
23 with respect to modifying the definition of the term
24 ‘country of concern’. Such regulations shall establish
25 a process for removing from the definition of that

1 term a country that no longer meets the criteria
2 under section 1001(2).

3 “(d) PUBLIC PARTICIPATION IN RULEMAKING.—The
4 provisions of section 709 shall apply to any regulations
5 issued under this title.

6 **“SEC. 1009. JUDICIAL REVIEW.**

7 “(a) IN GENERAL.—Except as provided in this sec-
8 tion, and notwithstanding any other provision of law, an
9 action taken under this title, or any action taken by an
10 Executive department (as defined in section 101 of title
11 5, United States Code) to implement such an action, shall
12 not be subject to administrative review or judicial review,
13 including bid protests before the Government Account-
14 ability Office or in any Federal court.

15 “(b) CIVIL ACTIONS.—A civil action challenging an
16 action or finding under this title may be brought only in
17 the United States Court of Appeals for the District of Co-
18 lumbia Circuit. Not later than 60 days after a party is
19 notified of an action by the Committee under this title,
20 the party may file a petition for judicial review in the
21 United States Court of Appeals for the District of Colum-
22 bia claiming that the action is unlawful.

23 “(c) STANDARD OF REVIEW.—The court shall hold
24 an action unlawful in response to a petition that the court

1 finds to be arbitrary, capricious, an abuse of discretion,
2 or otherwise not in accordance with law.

3 “(d) EXCLUSIVE JURISDICTION AND REMEDY.—The
4 United States Court of Appeals for the District of Colum-
5 bia Circuit shall have exclusive jurisdiction over claims
6 arising under this title against the United States, any
7 United States department or agency, or any component
8 or official of any such department or agency, subject to
9 review by the Supreme Court of the United States under
10 section 1254 of title 28, United States Code. A determina-
11 tion by the court under this section shall be the exclusive
12 judicial remedy for any claim described in this section
13 against the United States, any United States department
14 or agency, or any component or official of any such de-
15 partment or agency.

16 “(e) ADMINISTRATIVE RECORD AND PROCEDURES.—

17 “(1) IN GENERAL.—The procedures described
18 in this subsection shall apply to the review of a peti-
19 tion under this section.

20 “(2) ADMINISTRATIVE RECORD.—

21 “(A) FILING OF RECORD.—The United
22 States shall file with the court an administra-
23 tive record, which shall consist of the informa-
24 tion that the Committee relied upon in taking
25 an action under this title.

1 “(B) UNCLASSIFIED, NONPRIVILEGED IN-
2 FORMATION.—All unclassified information con-
3 tained in the administrative record that is not
4 otherwise privileged or subject to statutory pro-
5 tections shall be provided to the petitioner with
6 appropriate protections for any privileged or
7 confidential trade secrets and commercial or fi-
8 nancial information.

9 “(C) IN CAMERA AND EX PARTE.—The fol-
10 lowing information may be included in the ad-
11 ministrative record and shall be submitted only
12 to the court ex parte and in camera:

13 “(i) Classified information.

14 “(ii) Sensitive security information, as
15 defined by section 1520.5 of title 49, Code
16 of Federal Regulations (or any successor
17 regulation).

18 “(iii) Privileged law enforcement in-
19 formation.

20 “(iv) Information obtained or derived
21 from any activity authorized under the
22 Foreign Intelligence Surveillance Act of
23 1978 (50 U.S.C. 1801 et seq.), except
24 that, with respect to such information,
25 subsections (c), (e), (f), (g), and (h) of sec-

1 tion 106 (50 U.S.C. 1806), subsections
2 (d), (f), (g), (h), and (i) of section 305 (50
3 U.S.C. 1825), subsections (c), (e), (f), (g),
4 and (h) of section 405 (50 U.S.C. 1845),
5 and section 706 (50 U.S.C. 1881e) of that
6 Act shall not apply.

7 “(v) Information subject to privilege
8 or protections under any other provision of
9 law.

10 “(D) UNDER SEAL.—Any information that
11 is part of the administrative record filed ex
12 parte and in camera under subparagraph (C),
13 or cited by the court in any decision, shall be
14 treated by the court consistent with the provi-
15 sions of this paragraph and shall remain under
16 seal and preserved in the records of the court
17 to be made available consistent with those pro-
18 visions in the event of further proceedings. In
19 no event shall such information be released to
20 the petitioner or as part of the public record.

21 “(f) RETURN.—After the expiration of the time to
22 seek further review, or the conclusion of further pro-
23 ceedings, the court shall return the administrative record,
24 including any and all copies, to the United States.

1 “(g) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion shall be construed as limiting, superseding, or pre-
3 venting the invocation of, any privileges or defenses that
4 are otherwise available at law or in equity to protect
5 against the disclosure of information.

6 “(h) **DEFINITIONS.**—In this subsection, the term
7 ‘classified information’—

8 “(1) has the meaning given that term in section
9 1(a) of the Classified Information Procedures Act
10 (18 U.S.C. App.); and

11 “(2) includes—

12 “(A) any information or material that has
13 been determined by the United States Govern-
14 ment pursuant to an Executive order, statute,
15 or regulation to require protection against un-
16 authorized disclosure for reasons of national se-
17 curity; and

18 “(B) any Restricted Data, as defined in
19 section 11 of the Atomic Energy Act of 1954
20 (42 U.S.C. 2014).

21 **“SEC. 1010. MULTILATERAL ENGAGEMENT AND COORDINA-**
22 **TION.**

23 “(a) **IN GENERAL.**—The President, in coordination
24 with the United States Trade Representative, the Sec-

1 retary of Commerce, the Secretary of State, and the Sec-
2 retary of the Treasury, shall—

3 “(1) in coordination and consultation with rel-
4 evant Federal agencies, conduct bilateral and multi-
5 lateral engagement with the governments of coun-
6 tries that are allies and partners of the United
7 States to secure coordination of protocols and proce-
8 dures with respect to covered activities with coun-
9 tries of concern and covered foreign entities; and

10 “(2) upon adoption of protocols and procedures
11 described in paragraph (1), work with those govern-
12 ments to establish mechanisms for sharing informa-
13 tion, including trends, with respect to such activities.

14 “(b) STRATEGY FOR DEVELOPMENT OF OUTBOUND
15 REVIEW MECHANISMS.—The Committee, in consultation
16 with the Attorney General, shall—

17 “(1) develop a strategy to work with countries
18 that are allies and partners of the United States to
19 develop mechanisms comparable to this title for the
20 review of covered activities; and

21 “(2) provide technical assistance to those coun-
22 tries with respect to the development of those mech-
23 anisms.

1 **“SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.**

2 “(a) IN GENERAL.—There are authorized to be ap-
3 propriated such sums as may be necessary to carry out
4 this title, including to provide outreach to industry and
5 persons affected by this title.

6 “(b) HIRING AUTHORITY.—The head of any agency
7 specified in section 1002(b) may appoint, without regard
8 to the provisions of sections 3309 through 3318 of title
9 5, United States Code, candidates directly to positions in
10 the competitive service (as defined in section 2102 of that
11 title) in that agency. The primary responsibility of individ-
12 uals in positions authorized under the preceding sentence
13 shall be to administer this title.

14 **“SEC. 1012. RULE OF CONSTRUCTION WITH RESPECT TO**
15 **FREE AND FAIR COMMERCE.**

16 “Nothing in this title may be construed to restrain
17 or deter foreign investment in the United States, United
18 States investment abroad, or trade in goods or services,
19 if such investment and trade do not pose a risk to the
20 national security of the United States.”

